



NEW PAID LEAVE LAWS IN THE WAKE OF COVID-19: WHAT COLORADO HEALTH CARE PROVIDERS NEED TO KNOW FOR 2020 AND BEYOND

The COVID-19 pandemic brought about a number of changes at both the federal and state levels related to paid leave for employees. This primer provides a general overview of the new paid sick leave landscape for Colorado health care workers.

First, the federal **Families First Coronavirus Response Act (the FFCRA)**, signed into law by President Donald Trump on March 18, 2020, included both the **Emergency Paid Sick Leave Act (the EPSLA)** and the **Emergency Family and Medical Leave Expansion Act (the EFMLEA)**. Both of these acts require excused time off and paid leave for certain employees dealing with COVID-19 and its consequences through the end of 2020. Notably, though, the

FFCRA allows employers of “health care providers” and “emergency responders” to exclude such employees from eligibility for the leave provided under the EPSLA and the EFMLEA.

Second, during Colorado’s 2020 legislative session, the **Healthy Families and Workplaces Act (the HFWA)** was passed and then signed into law by Governor Jared Polis on July 14, 2020. The HFWA requires all Colorado employers to provide three types of paid sick leave: (1) COVID-19 sick leave through the end of 2020, broadening the requirements of the federal FFCRA’s EPSLA; (2) sick leave for future public health emergencies; and (3) regular sick leave that employees can accrue each year.

Three Types of Paid Sick Leave

COVID-19 SICK LEAVE

- **Effective:** 2020 (through Dec. 31, 2020)
- **Laws:** The federal FFCRA's EPSLA as broadened by the Colorado HFWA
- **Applicability:** The federal law excludes "health care providers" (defined very broadly), but the Colorado HFWA broadens the applicability of the EPSLA and essentially makes it apply to all Colorado employers and employees.
- **Leave:** 80 hours

SICK LEAVE FOR FUTURE PUBLIC HEALTH EMERGENCIES

- **Effective:** 2021 and beyond
- **Laws:** The Colorado HFWA
- **Applicability:** All Colorado employers
- **Leave:** 80 hours

REGULAR SICK LEAVE

- **Effective:** 2021 and beyond
- **Laws:** The Colorado HFWA
- **Applicability:** In 2021, only Colorado employers with 16 or more employees. Starting in 2022, all Colorado employers.
- **Leave:** Employees can accrue 48 hours per year

*The expansiveness of this definition is being challenged in court and it has in fact been struck down by the U.S. District Court for the Southern District of New York. However, this does not currently affect the law's applicability to Colorado employers/employees.

HEALTH CARE PROVIDERS AND THE FEDERAL FFCRA'S EPSLA AND EFMLEA

The federal FFCRA's EPSLA and EFMLEA allow employers to exclude "health care providers" from eligibility for the leave provided under those acts. The U.S. Department of Labor's rules implementing the FFCRA define "health care provider" very broadly as *anyone employed* at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.¹

On its [FFCRA Questions and Answers webpage](#), the U.S. Department of Labor attempts to clarify its intent: "To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA. For example, an employer may decide to exempt these employees from leave for caring for a family member, but choose to provide them paid sick leave in the case of their own COVID-19 illness."

COVID-19 SICK LEAVE

Although the federal FFCRA allows employers to exclude "health care providers" from eligibility for leave, the Colorado HFWA broadens the applicability of the FFCRA's EPSLA and essentially makes it apply to all Colorado employers and employees through Dec. 31, 2020. Therefore, health care providers in Colorado must be afforded paid sick leave as follows:

- *Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay* when the employee is unable to work because the employee is quarantined (pursuant to federal, state, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to federal, state, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the secretaries of the Treasury and Labor.

Employers must notify employees in writing of the right to take paid leave, in the amounts and for the purposes in the HFWA, without retaliation, and display an informational poster in a conspicuous and accessible place in each location where employees work. These requirements can be satisfied using this [document](#) and this [poster](#).

WHAT IF I HAVE TO QUARANTINE OR HAVE COVID-19 SYMPTOMS?

Employers must offer employees two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay when the employee is unable to work because the employee is quarantined (pursuant to a government order or advice of a health care provider) and/or experiencing COVID-19 symptoms and seeking a medical diagnosis.

WHAT IF SCHOOLS ARE CLOSED?

Employers must offer employees two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay to care for a child whose school or child care provider is closed or unavailable due to COVID-19.

WHAT IF I HAVE TO CARE FOR SOMEONE WITH COVID-19?

Employers must offer employees two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay when the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to government order or advice of a health care provider).

SICK LEAVE FOR FUTURE PUBLIC HEALTH EMERGENCIES

After 2020 when the FFCRA is no longer in effect, the Colorado HFWA will continue to ensure Colorado employees are provided 80 hours of sick leave during public health emergencies. This leave will look substantially similar to the leave provided under the FFCRA's EPSLA, as broadened by the HFWA (described above). This paid sick leave for public health emergencies covers employees needing to isolate or quarantine, care for themselves or a family member due to the disease, or seek a diagnosis or preventive care due to the disease. An employee may also use the supplemental paid sick leave to care for a child or other family member when the individual's child care provider is unavailable due to a public health emergency, or if the child's or family member's school or place of care has been closed due to a public health emergency. Additionally, leave may be used to allow an employee to stay home from work because of a health condition "that may increase susceptibility to or risk of a communicable illness that is the cause of the public health emergency."

Employees do not need to provide employers with documentation to take supplemental paid sick leave prompted by a public health emergency. However, employees may take such leave only once during any given public health emergency, even if the public health emergency is amended, extended, restated, or prolonged.

REGULAR SICK LEAVE

Finally, but perhaps most significantly, the Colorado HFWA establishes a new right to 48 hours of regular paid sick leave for employees' health care needs or to allow them to care for family members with health care needs. Starting on Jan. 1, 2021, employers with 16 or more employees will need to comply with

this new requirement. All employers will need to comply as of Jan. 1, 2022.

The HFWA does not preclude employers from providing employees with more paid sick leave than required by its terms. If an employer has a paid leave policy that satisfies the HFWA's paid sick leave requirements, it is not required to provide additional paid sick leave to employees.

Employees may earn up to 48 hours of regular sick leave each year accrued at a rate of one hour per every 30 hours worked. Paid sick leave must be paid in an amount equal to the hourly rate or salary, and with the same benefits, that the employee normally earns. The HFWA does not impose any waiting period before an employee may use accrued paid sick leave. Employees may carry forward unused time and use it in subsequent years, though they may not use more than 48 hours in one year. Employers are not required to pay out unused sick leave upon separation.

The HFWA permits an employee to use their accrued paid sick leave for a range of reasons:

- The employee or the employee's family member:
 - has a mental or physical illness, injury, or health condition that prevents the employee from working;
 - needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
 - needs to obtain preventive medical care.
- The employee or the employee's family member has been the victim of domestic abuse, sexual assault, or harassment and the leave is to seek medical attention, obtain services from a victim services organization, obtain mental health or other counseling, seek relocation, or seek legal services as a result of the domestic abuse, sexual assault, or harassment.
- Due to a public health emergency, a public official has ordered the closure of the employee's place of business or the school or place of care of the employee's child and the employee needs to be absent from work to care for the child.

Employers must not require employees to disclose details relating to domestic violence, sexual assault, or stalking or details of an employee's or an employee's family members' health information as a condition of providing paid sick leave. Any health or safety information disclosed to an employer must be kept confidential and maintained in a separate file from employment records.

Employees may request leave by any means, including oral, except employers may institute reasonable procedures for requesting foreseeable time off. If the leave is not foreseeable, employees cannot be required to provide documentation or proof of their reasons for using paid time, so long as their absence does not exceed three consecutive workdays. For an absence of four or more consecutive workdays, employers may seek documentation to verify the leave is for an authorized purpose.

Additional Resources from the Colorado Department of Labor and Employment:

- [Interpretive Notice & Formal Opinion \(“INFO”\) # 6A: Paid Leave under the Healthy Families and Workplaces Act \(“HFWA”\) through Dec. 31, 2020](#)
- [Interpretive Notice & Formal Opinion \(“INFO”\) # 6B: Paid Leave under the Healthy Families and Workplaces Act \(“HFWA”\), as of Jan. 1, 2021](#)
- [Colorado Paid Leave & Whistleblower Posters](#)



7351 Lowry Boulevard, Suite 110
Denver, Colorado 80230-6902
720.859.1001 • 800.654.5653 • fax 720.859.7509
www.cms.org